

REMARKS

Claims 5 and 6 have been amended to change the recitation "polypeptide" to "polynucleotide". Plainly, SEQ ID NOS: 1 and 3 are polynucleotide sequences. Thus, no new matter has been added. Entry of the amendment is respectfully requested.

In response to the Restriction between Groups I and II, applicants hereby elect Group II, now containing claims 4-6, 10-14 and 17-25. This election is made without traverse.

The Office Action also states that claims 13-25 encompass polynucleotides encoding more than one distinct protein, and that as such, applicants must also elect a specific sequence for examination. Applicants respectfully traverse this requirement.

Section 803.04 of the *Manual of Patent Examining Procedure* (MPEP) states that even though nucleotide sequences encoding different proteins are structurally distinct chemical compounds and unrelated to one another so as to be deemed to normally constitute independent and distinct inventions, the Commissioner has decided to partially waive the requirements of 37 C.F.R. § 1.141 et seq., and to permit a reasonable number of such nucleotide sequences to be claimed in a single application. This Section of the MPEP goes on to state that it has been determined that normally ten sequences constitute a reasonable number for examination purposes, and that in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction. Further, in addition to the specifically selected sequences, those sequences that are patentably indistinct from the selected sequences will also be examined. Moreover, nucleotide sequences encoding the same protein are not considered to be independent

Application No.: 10/066,127

Docket No.: EGYPSA 3.0-006

and distinct inventions and will continue to be examined together.

In this case, claim 13 depends from claim 4, which is directed to an isolated polynucleotide comprising the sequence of SEQ ID NO: 1 or SEQ ID NO: 3, or a fragment or variant thereof. Claims 17-19 embrace combinations of four different pairs of polynucleotides (i.e., totaling eight polynucleotides). Thus, it would appear that applicants are well within the limitations set forth in MPEP § 803.04. In any event, to completely and fully comply with this aspect of the requirement, applicants hereby elect SEQ ID NOS: 1, 3, 5 and 7.

The Examiner is cordially invited to contact the undersigned if she has any questions.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version with markings to show changes made".

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefore.

Dated: March 12, 2003

Respectfully submitted,

By Shawn P. Foley  
Shawn P. Foley  
Registration No.: 33,071  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorneys for Applicant

**Version With Markings to Show Changes Made**

5. A fragment of said ~~polypeptide~~polynucleotide of Claim 4, wherein said fragment is a functional fragment.
6. A variant of said ~~polypeptide~~polynucleotide of Claim 4, wherein said variant has a 96% sequence identity to SEQ ID NO:1 or 3.